Spring 2011

Maria Flores, Best of Section D

Maria Flores

No. 09-9100

In the Supreme Court of the United States

BEAU RADLEY,
PETITIONER,

v.

FAIR COUNTY POLICE DEPARTMENT and ARTHUR GOODE,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

I. Whether the Fourth Amendment protection against excessive force extends beyond initial seizure?

II. If the Court were to apply a rule of continuing seizure to the Fourth Amendment protection against the use of excessive force, to what point beyond initial seizure should that protection extend?

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STATEMENT OF JURISDICTION

The court of appeals entered judgment on March 15, 2010. (R. at 16). Petitioner filed his petition for writ of certiorari on May 15, 2010. (R. at 17). This Court granted the petition on October 7, 2010. (R. at 18). This Court's jurisdiction rests on 28 U.S.C. § 1254 (1) (2000). A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment of the United States Constitution and 42 U.S.C. § 1983 are the relevant provisions and are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

On September 23, 2008, John Marlin ("Marlin"), a police officer employed by Respondent Fair County Police Department, pulled Beau Radley ("Radley") over on the suspicion that Radley was driving drunk. (R. at 3). Marlin took Radley into custody and transported Radley to the Fair Police Station after Radley refused to take a breathalyzer test. (R. at 3). Upon arriving at the police station, Marlin escorted Radley into the booking room and handed Radley off to Respondent Officer Arthur Goode ("Goode"). (R. at 3). Marlin exited the booking room leaving Radley in the sole custody of Goode. (R. at 3). Goode removed Radley's handcuffs for the booking process and re-cuffed Radley upon completion; however, Radley complained that the handcuffs were too tight. (R. at 3). When Marlin returned, Radley complained again, and Marlin loosened the handcuffs. (R. at 3). Goode then escorted Radley, without Marlin, to a holding cell where Radley alleges Goode pushed and hit Radley (R. at 3). Hours later Radley was examined at the Fair County Hospital. (R. at 3). Radley's wrists were bruised and he had a cut lip and bruising along his jaw. (R. at 4).

Radley filed a civil action in the United States District Court for the Southern District of Fair against Respondents for deprivation of his rights under 42 U.S.C. § 1983 (R. at 2) alleging violation of his Fourth and Fourteenth Amendment rights by Respondents' use of excessive force. (R. at 4). The District Court granted Respondents' motion to dismiss the Fourth Amendment component of Radley's 42 U.S.C. § 1983 claim for failure to state a claim upon which relief can be granted. (R. at 11). The Fifteenth Circuit Court affirmed the decision of the District Court. (R. at 16). Radley's petition for writ of certiorari to this Court was granted on October 7, 2010. (R. at 18). Respondents respectfully request this Court uphold the decision of the Fifteenth Circuit Court of Appeals and dismiss Radley's claim.

SUMMARY OF THE ARGUMENT

I

The Fifteenth Circuit did not err in affirming the District Court's dismissal of the Fourth Amendment component of Radley's excessive use of force claim. The Fourth Amendment protects against unreasonable seizures. However, Fourth Amendment protection does not extend past initial seizure because seizure is "a single act" and not "a continuous fact." Nevertheless, some courts subscribe to the idea of continuing seizure but do not agree as to where seizure ends and pretrial detention begins. Although *Graham* provides support for the idea of continuing seizure, the facts in *Graham* are not sufficiently analogous to the case at bar to control the outcome. The concept of continuing seizure is illogical and is at best a legal fiction. A distinction should be made between the act of seizure and the state of seizure. The Fourth Amendment is directed at the act of seizure and not at the conditions of seizure. The moment Radley was seized, he became a pretrial detainee. As a pretrial detainee, Radley's excessive use

of force claim falls under the protection of the Fourteenth Amendment and not the Fourth Amendment.

II

In the event that this Court favors continuing seizure over initial seizure, Fourth Amendment protection should cease once the detainee is no longer in the custody of the arresting officer or officers. The arresting officer rule finds support in the jurisprudence of this Court and is not inconsistent with *Graham*. Furthermore, the Second, Sixth, and Ninth Circuits explicitly espouse and follow the arresting officer rule. Finally, the arresting officer rule would provide much needed consistency, is easy to follow, and makes sense. Radley's claim does not survive under the arresting officer rule and should be dismissed.

I. FOURTH AMENDMENT PROTECTION AGAINST EXCESSIVE FORCE DOES NOT EXTEND BEYOND INITIAL SEIZURE.

A. The interpretation of the concept of seizure and the application of Fourth Amendment protection to excessive force claims after *Graham* has not been consistent.

Analysis of excessive force claims brought under 42 U.S.C. § 1983 begin by identifying the allegedly infringed constitutional right. *Graham v. Connor*, 490 U.S. 386, 394 (1989). Hence, when a plaintiff files an excessive force claim, a court must first determine whether the plaintiff's claim is governed by the Fourth, Fifth, Eighth, or Fourteenth Amendment. *See Riley v. Dorton*, 115 F. 3d 1159, 1161 (4th Cir. 1997). The Fourth Amendment protects free citizens against unreasonable searches and seizures. *See Graham,* 490 U.S. at 394. Excessive force claims that arise in the context of an investigatory stop or arrest of a free citizen must be analyzed within the contours of the Fourth Amendment. *Id*. at 394 (discussing *Tennessee v. Garner*, 471 U.S. 1 (1985)) (making explicit the implicit analysis in *Garner* that all claims of

excessive force by law enforcement officers' "seizure" be analyzed under the "reasonableness" standard of the Fourth Amendment).

According to *Graham*, seizure by government actors which restrains the liberty of a free citizen through a showing of authority or physical force triggers Fourth Amendment protections. *Id*. at 395 n.10 (quoting *Terry v. Ohio*, 392 U.S.1 (1968)). However, *Graham* did not resolve whether Fourth Amendment protection against deliberate excessive physical force continues to apply beyond the ending point of arrest and the beginning of pretrial detention. *Id.* *Graham* also did not specify at what point arrest ends and pretrial detention begins. *Id*. (The Court referred to the ending point of arrest but did not actually define it when declining to answer whether the Fourth Amendment continues to apply after arrest). *Graham's* open-endedness has led to a split amongst the circuit courts with regard to the application of the Fourth Amendment to excessive use of force claims by individuals who have been seized. *See generally Riley*, 115 F.3d 1159 (providing an overview of the split with reference to specific circuits).

A critical and much disputed issue amongst the circuit courts is whether the Fourth Amendment continues to apply after initial seizure. See *generally*, *id*. Initial seizure is the idea that seizure is limited to the initial act of seizing. *Riley*, 115 F.3d at 1163 (citing *Wilkins v. May*, 872 F.2d 190 (7th Cir. 1989)). Courts holding that the Fourth Amendment applies after initial seizure espouse the idea of continuing seizure. *Id.* at 1162. Continuing seizure is the idea that seizure does not end at the point of arrest but continues while the person is in custody. *Id.* Respondents hold, with *Riley*, that the concept of continuing seizure is out-of-place given this Court's definition of seizure. *See id*. at 1163. (Seizure is "a single act") (quoting *Thompson v. Whitman*, 85 U.S. 457 (1873)).

B. This Court's definition of seizure does not support the idea of continuing seizure.

In *Thompson*, 85 U.S. at 470, this Court defined seizure as "a single act" explicitly stating seizure is "not a continuous fact." *Thompson* is about seizure of property; however, the simple language of the Fourth Amendment applies equally to seizures of persons and property. *Payton v. New York*, 445 U.S. 573, 585 (1980). According to this Court, a Fourth Amendment seizure occurs when the government intentionally terminates an individual's freedom of movement. S*cott v. Harris*, 550 U.S. 372, 381 (2007) (citing *Brower v. County of Inyo*, 489 U.S. 593 (1989)). Hence, it follows that once a law enforcement officer has seized a person by intentionally terminating that person's freedom of movement, the single act of detention has been effectuated and seizure has been completed. *See Robles v. Prince George's County, Md.*, 302 F.3d 262, 268 (4th Cir. 2002) (citing *Riley*, 115 F.3d). A person who has been detained through intentional termination of movement remains seized but the act of seizure has ended since seizure itself is not a "continuous fact." *See Thompson*, 85 U.S. at 470 (1873). It is the possession following the seizure and not the seizure that is continuous. *Id.* at 470. Thus, once Radley was handcuffed by Marlin (R. at 3), Radley's seizure came to an end although Radley was in fact seized since Radley was in the custody or possession of Marlin.

The Fourth Amendment does not apply to Radley's excessive use of force claim because Radley became a pretrial detainee once his seizure was effectuated. *See Riley*, 115 F.3d at 1163 (citing *Brothers v. Klevenhagen*, 28 F.3d 452 (5th Cir. 1994)) (holding that an individual that has been arrested and placed in police custody becomes a pretrial detainee protected by the Due Process Clause). This Court has held that the Due Process Clause provides pretrial detainees with protection from use of force that is excessive amounting to punishment. *Graham*, 490 U.S. at 395 n.10. (citing *Bell v. Wolfish*, 441 U.S. 520 (1979)).

C. While *Graham* implies that the concept of continuing seizure is valid, *Graham's* facts are not sufficiently analogous to the case at bar for *Graham* to control.

Despite this Court's definition of seizure in *Thompson*, this Court's holding in *Graham*, suggests that initial seizure extends beyond the act of seizure. *See Graham*, 490 U.S. at 396 (holding that all excessive force claims against law enforcement officers during the course of a seizure of a citizen who is free such as an arrest or investigatory stop be analyzed under the reasonableness standard of the Fourth Amendment and not the substantive due process approach). Dethorne Graham ("Graham") had already been effectively seized when the alleged excessive use of force occurred because his freedom of movement had intentionally been terminated when one of the arriving officers placed Graham in handcuffs. *Id.* at 389. However, Graham, unlike Radley, was detained briefly during an investigatory stop that did not result in arrest and much less in pretrial detention. *Id.* at 389. Graham was not arrested but only detained while the officer who stopped him ascertained whether or not his suspicions were valid. *Id.* Radley, on the other hand, was arrested and transported to the police station where he was booked and jailed. (R. at 3). Graham's seizure occurred in pre-arrest mode and as such Graham's seizure does not fall within the much disputed "legal twilight zone," a term coined by the Fifth Circuit court referring to the point between arrest and sentencing. *Wilson v. Spain*, 209 F.3d 713, 715 (8th Cir. 2000).

D. The Fourth, Fifth, and Seventh Circuit Courts have ascertained in rejecting the idea of continuing seizure and have properly refused to apply Fourth Amendment protection past initial seizure.

The Fourth, Fifth, and Seventh Circuit Courts espouse initial seizure while the Second, Sixth, and Ninth Circuit Courts do not. *See generally*, *Riley*, 115 F.3d at 1163-64. The courts that reject the concept of initial seizure agree that seizure extends beyond initial seizure but do not agree where it ends. *See Valencia v. Wiggins*, 981 F.2d 1440, 1444-45 (5th Cir.1993). The Fifth Circuit, for example, explained that the Fourth Amendment text prohibiting unreasonable

seizures does not lend support to its application in a post-arrest encounter. *Id.* at 1163 (citing *Brothers*, 28 F.3d 452). The Seventh Circuit had previously endorsed this position. *Id.* (citing *Wilkins*, 872 F.2d 190).

The courts that reject the idea of "continuing seizure" are correct. *See generally*, *Riley*, 115 F.3d. 1159. First, as mentioned above, the Supreme Court has defined seizure as "a single act" instead of "a continuous fact." *Thompson*, 85 U.S. at 470. Second, as the Fourth Circuit pointed out, a review of the basic jurisprudence of the Supreme Court reveals decades of precedent pertaining to the Fourth Amendment focusing on initial deprivation of liberty. *Riley*, 115 F.3d at 1162 (citing seventeen sources spanning the 1950's to the 1990's). It follows then that the Fourth Amendment is not directed at the conditions of custody but rather at the act of arrest. *See id.* at 1163. Third, one should look at the plain meaning of the word "seizure" itself to see that the idea of "continuing seizure" is flawed and is at best a legal fiction. *See Wilkins*, 872 F.2d at 192-193. A legal fiction is an assumption that though something may be untrue, it is true for the purpose of altering the operation of a legal rule within the process of judicial reasoning. *Black's Law Dictionary* (9th ed. 2009). However, *fictio juris non est ubi veritas*. Respondents implore this Court rule accordingly.

A natural interpretation would limit the word "seizure" to the act of initial seizing meaning that subsequent events happened after and not during the seizure. *Wilkins*, 872 F.2d at 192-93. Consequently, any excessive use of force events occurring after initial seizure would be outside the scope of the Fourth Amendment because these events would not have occurred within the act of seizing. *Id*. Finally, the Fifth Circuit held that the Fourth Amendment does not provide an appropriate constitutional basis after completion of the incidents of arrest; after release of the plaintiff from the custody of the arresting officer; and, after the plaintiff had been

awaiting trial in detention for a period of time which is significant. *Valencia*, 981 F.2d at 1443-44.

The Seventh Circuit pointed out that the Fourth Amendment is inapt after arrest since the scope of its inquiry is the reasonableness of the force used in seizing and restraining a suspect in relation to the danger the suspect poses to the officer handling the arrest and to the surrounding community. *Wilkins,* 872 F.2d at 193-94. The *Wilkins* Court concluded that once the officer has custody over the suspect, the issue is moot. *Id.* The Fourth Circuit would agree. *See Orem v. Rephann*, 523 F.3d 442, 449 (4th Cir. 2008) (refusing to apply the Fourth Amendment in a situation where the officer used a taser on an unruly suspect while she was in the back seat of the squad car). The *Orem* Court held that since the suspect had been arrested when the officer used his taser, the act of seizure was complete. *Id.* The Fourth Circuit's holding in *Orem* is consistent with the Fourth Circuit's previous holding in *Robles*. In *Robles*, police officers tied a suspect to a metal pole after his arrest after the county that had issued his warrant refused to retrieve him from the arresting officers. *See Robles,* 302 F.3d at 267. The *Robles* Court held that since the arrest had been completed when the incident took place, and since the arrest complied with the safeguards of the Fourth Amendment, the Fourth Amendment did not extend because the suspect was then a pretrial detainee. *Id.* at 269.

The Fifth Circuit has given the following reasons for not adopting the idea of continuing seizure and thus not applying the Fourth Amendment to pretrial detainees' excessive force claims. The Fourth Amendment's lack of textual support to the post-arrest encounter; the Supreme Court's refusal to apply Fourth Amendment protection to inmates after incarceration; and, the holding in *Graham* and *Bell* that the appropriate constitutional basis is the Due Process Clause with regard to excessive force suits by pretrial detainees. *Riley*, 115 F.3d at 1163 (citing

Brothers, 28 F.3d 452) (holding that an individual that has been arrested and placed in police custody becomes a pretrial detainee protected by the Due Process Clause).

Justice Ginsburg has argued that application of the Fourth Amendment is justified under "continuing seizure" contending that a person's seizure ends not after arrest but continues to the end of trial. *Riley*, 115 F.3d 1159 at 1162 (citing *Albright v. Oliver*, 510 U.S. 266 (1994)(Ginsburg, J., concurring)). However, Justice Ginsburg's argument is contrary to Supreme Court precedent. *Id.* (citing *Bell*, 441 U.S. 520) (holding that pretrial detainees' excessive force claims should be analyzed under the Fourteenth Amendment's Due Process Clause).

Radley became a pretrial detainee when his seizure ended the moment he was lawfully arrested by Marlin. *See Riley*, 115 F.3d at 1161-62 (quoting *e.g., United States v. Cobb*, 905 F.2d 784 (4th Cir. 1990); *Cooper v. Dyke*, 814 F.2d 941 (4th Cir. 1987)) (holding that a person who has been arrested lawfully and is being held before guilt is formally adjudicated is a pretrial detainee). In light of the Fourth, Fifth, and Seventh Circuit Courts' reasoning, Respondents maintain that Radley should be classified as a pretrial detainee. As such, Fourth Amendment protection does not apply, and Radley's claim should be dismissed.

E. The concept of continuing seizure cannot be logically sustained.

While legal precedent has not clearly established whether seizure ends with the act of seizing or whether seizure continues after the act of seizing, it is inherent in the meaning of the word seizure itself to interpret it to mean initial seizure. See *Wilkins*, 872 F.2d at 192-93. There can be no such thing as continuous seizure in terms of action because the act of seizure ends once the individual has been seized. *See Thompson*, 85 U.S. at 470. The fact that a person is seized does not mean that he or she is in the act of being seized. *See id.* at 470 (distinguishing between seizure and possession following seizure). One should distinguish between the act of seizure and

the state of seizure. *See id*. To exemplify the distinction between the act of seizure and the state of seizure, consider the case of a person who has been convicted and is serving the tenth year of a lengthy prison sentence. This person has long since been seized and is in a state of seizure, yet this Court has held that the Eighth Amendment governs a claim of excessive use of force and not the Fourth Amendment. *Graham*, 490 U.S. at 395 n.10 (citing *Whitley v. Albers*, 475 U.S. 312 (1986)). In plain terms, once the seizure of a free person has happened, the act of seizure is over and the Fourth Amendment no longer applies. *See id.*

Respondents do not dispute that Radley was seized. However, Respondents respectfully point out that it is not enough that Radley was in a state of seizure when the alleged use of excessive force occurred for the Fourth Amendment to apply. By the time that Goode allegedly injured Radley, the act of seizure had already been completed because Radley had already been seized by Marlin. (R. at 3).

II. IF THE COURT WERE TO APPLY A RULE OF CONTINUING SEIZURE TO FOURTH AMENDMENT PROTECTION AGAINST THE USE OF EXCESSIVE FORCE, FOURTH AMENDMENT PROTECTION SHOULD CEASE AS SOON AS THE DETAINEE OR ARRESTEE IS NO LONGER UNDER THE CUSTODY OF THE ARRESTING OFFICER OR OFFICERS.

A. The arresting officer rule finds support in this Court's jurisprudence and is not inconsistent with *Graham*.

That *Graham* provides support for the idea of continuing seizure cannot be denied. However, Fourth Amendment protection against use of excessive force should not apply once the detainee is no longer in the custody of the arresting officer or officers. *Valencia*, 981 F.2d at 1444. The arresting officer rule, as described in the preceding sentence, is not inconsistent with *Graham* based on the facts of the case. In *Graham*, the use of excessive force occurred while Graham was still in custody of the officer that seized him. *Graham*, 490 U.S. at 389. A textual reading of the case reveals that Graham was handcuffed tightly by the officer that seized him

implying that excessive force was used both in the course of seizing Graham and after Graham was seized when Graham's face was shoved against the hood of the car. *Id.* Only a short amount of time had elapsed between applying the handcuffs to shoving Graham against the car hood. *Id.* Graham was in the same location under the dominion of the same officers including the officer that handcuffed him when he was injured. *Id.* In contrast, more time had elapsed since Radley had been seized. In addition, Radley was no longer at the location where he had been seized or under the dominion of the officer who had seized him when the alleged excessive use of force occurred against Radley. (R. at 3). Again, at the risk of appearing redundant but for the sake of emphasis, Graham had not been transferred into the custody of another officer during the excessive use of force incident. *Id.* Radley, on the other hand, was no longer in the custody of the officer that arrested him when the alleged use of force occurred. (R. at 3). In *Fontana v. Haskin*, 262 F.3d 871, 880 (9th Cir. 2001), the Ninth Circuit concluded that the plaintiff's excessive use of force claim should be analyzed under the Fourth Amendment because the plaintiff was in the custody and "continuing dominion" of the arresting officer. Since Radley was not in the custody and continuing dominion of the arresting officer when his right to be free from excessive force was allegedly violated, the Fourth Amendment is not the appropriate constitutional standard by which to analyze Radley's claim.

Graham reaffirms in its dicta *Garner's* holding that that both when a particular seizure is made and how it is carried out determine the "reasonableness" of a particular seizure. *Id.* at 395 (citing *Garner*, 471 U.S. 1). The *Graham* Court goes on to say that under Fourth Amendment jurisprudence, the right to arrest comes with the right to use physical coercion to some degree. *Id.* at 396 (citing *Terry*, 392 U.S. 1). Furthermore, *Graham* recognized that some allowance must be made when calculating reasonableness for the fact police officers have to often make

split-second judgments. *Id*. at 396-97. An obvious implication of the analysis provided by the *Graham* Court is that a Fourth Amendment seizure often begins with a law enforcement officer's decision to initiate the seizure. It is also the officer who effectuates the seizure that determines how much physical coercion to apply. *See Graham*, 490 U.S. at 396-97. The arresting officer controls the initial seizure and the immediate conditions of that seizure. *See Fontana*, 262 F.3d at 880-81. Once the arresting officer hands the arrestee over to another officer, the conditions of the arrestee's seizure are no longer controlled by the arresting officer. *See id.* It makes sense to extend Fourth Amendment protection from the point that a law enforcement officer or officers takes a person into custody through the time the person remains in that officer's or officers' custody in light of the officer's or officers' continuing dominion over the person that has just been taken into custody. Marlin's continuing dominion over Radley ceased when Marlin left Radley with Goode. (R. at 3).

Furthermore, this Court has suggested in its dicta that after police officers effectuate a seizure under the Fourth Amendment, the Fourth Amendment may apply while the suspect is under the control of the police officers. Kathryn R. Urbonya, *"Accidental" Shootings As Fourth Amendment Seizures*, 20 HASTINGS CONST. L.Q., 337, 374 (1992) (citing *California v. Hodari D.*, 499 U.S. 621 (1991)). This Court briefly touched on the idea of a continuing arrest when this Court explained that if a suspect escaped after an officer stopped the suspect through the use of physical force, there may have been an arrest but not a continuing arrest. *Id*. In other words, the Court recognized there would have been a continuing seizure while the suspect remained with the arresting officer. *Id.*

B. Some Circuits explicitly follow the arresting officer rule.

The Second, Sixth, and Ninth Circuits have explicitly based their decision to apply the Fourth Amendment based on the arrestee being in the custody of the arresting officer when the alleged excessive force occurred. *E.g.*, *Phelps v. Coy*, 286 F.3d 295, 300 (6th Cir. 2002); *Fontana v. Haskin*, 262 F.3d 871, 879 (9th Cir. 2001) (citing *Robins v. Harum*, 773 F.2d 1004 (9th Cir. 1985)); *Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir. 1989). The fact that the Second, Sixth, and Ninth Circuits subscribe to the arresting officer rule and explicitly state that they do provides support for this Court's affirmation of that rule.

C. The arresting officer rule not only makes sense but provides an easy to follow bright line rule.

Clearly, the lower courts have not been ruling consistently with regard to excessive use of force claims. Even the courts that agree with the idea of continuing seizure have come to different conclusions with regard to the point at where seizure ends. *See Valencia* 981 F.2d at1444-45. Disagreement amongst the lower courts has led to disparate holdings despite analogous circumstances even within the same circuits. Mitchell W. Karsh, *Excessive Force and the Fourth Amendment: When Does Seizure End?*, 58 FORDHAM L. REV. 823., 823-24 (1990). Easy to follow bright line rules that mark the boundary between seizure and detention are needed for the sake of consistency and fairness. *Id.* at 827-29.

The arresting officer rule provides a clear and easy to follow bright line rule which would promote consistency amongst the courts when deciding cases involving excessive use of force claims against law enforcement officers. The application of the arresting officer rule makes sense because as the Sixth Circuit put it, the "murky area" of whether the Fourth or Fourteenth Amendment applies does not begin while the arrestee is still in the custody of the arresting officers. *See Phelps*, 286 F.3d 295 at 300. If the excessive use of force occurs while the arrestee is still in the custody of the arresting officer or officers, the Fourth Amendment would apply. *Id*.

Conversely, if the excessive use of force occurs after the arrestee is no longer in the custody of the arresting officer or officers, then the Fourth Amendment would not apply. *Id.* at 301 (citing *Valencia*, 981 F.2d 1440). Consistent with the Sixth Circuit's analysis in *Phelps*, Respondents hold that because Radley was no longer in the custody of his arresting officer when he sustained injuries resulting from alleged use of excessive force (R. at 3), Radley had already crossed over into the "murky area", and as a result, his claim should be analyzed against the standards of the Fourteenth Amendment instead of the Fourth Amendment.

While it may be argued that the arresting officer rule is not equitable because some arrestees will enjoy protection for a greater period of time than others, the simplicity of the rule's comprehensibility and application is appealing. A simple rule is preferred over a complex rule since the bright line needed is one that "irradiates" and not "bedazzles." Karsch, *supra*, at 829 (citing Wayne R. LaFave, *The Fourth Amendment in an Imperfect World: On Drawing "Bright Lines" and "Good Faith"*, 43 U. PITT L. REV., 307, 327 (1982). It is impossible to ensure that every arrestee be held in the custody of the arresting officer or officers for the same length of time. Indeed, it would be preposterous to be held to such a high and inefficient standard in the face of impossibility! How long the arrestee remains in the custody of the arresting officer or officers will depend on the circumstances of the particular case. Once an arrestee is no longer in the custody of the arresting officer or officers, initial seizure would unequivocally be over, and Fourth Amendment protection would no longer apply.

CONCLUSION

Radley's excessive use of force claim should not be analyzed under the reasonableness standard of the Fourth Amendment because the Fourth Amendment does not apply past initial seizure. The Fourth Amendment is directed towards the act of seizure and not the state of

seizure. Radley had already been seized when the alleged excessive use of force incident occurred. Once Radley was seized, Radley became a pretrial detainee and the Fourth Amendment was no longer applicable. In the alternative, under the concept of continuing seizure, Radley's claim also fails under the arresting officer rule. The arresting officer rule should be applied because it makes sense given that the arresting officer or officers carry out the arrest and exert continuing dominion over the arrestee or detainee until the arrestee or detainee is left in the custody of another officer. Furthermore, the arresting officer rule provides a clear boundary as to where seizure ends and pretrial detention begins.

PRAYER

For these reasons, Respondents pray the Court affirm the decision of the Fifteenth Circuit and dismiss Radley's claim.

Respectfully submitted, this 11th day of March, 2011.

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APPENDIX

FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.